

## MEMORANDUM OF LAW

DATE: September 18, 1985

TO: Councilmember Gloria D. McColl

FROM: City Attorney

SUBJECT: Potential Legislation Regarding "Harmful  
Matter"

This is a follow-up to my conversation of September 13, 1985 with Marla Marshall in which I discussed the enforcement and legislative issues of protecting minors from exposure to harmful matter.

We have reviewed all 1985 Work Assignment Sheets and find no formal request for an amendment to San Diego Municipal Code section 62.0903 (Newsracks), since your 1984 request which was accomplished. However, as a courtesy, I did review the December 6, 1984 memorandum from Citizens for Decency through Law, Inc. That memorandum recommends an ordinance as used in Wichita,

Kansas to restrict harmful matter from minors. Our research indicates that this ordinance as well as a Minneapolis, Minnesota ordinance have been upheld against constitutional challenges. *M.S. News Company v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Upper Mid-west Booksellers v. City of Minneapolis*, 602 F.Supp. 1361 (D.Minn. 1985).

However, the State of California has enacted Penal Code section 313.1 as a statewide scheme of regulating harmful matter to minors. In light of this state restriction, I suggested to Marla that the Police Department use this section as an enforcement mechanism. Two municipal attempts to regulate harmful matter have been ruled to be preempted by Penal Code section 313.1. *American Booksellers v. Superior Court*, 129 Cal.App.3d 197 (1982), struck down similar harmful matter ordinances enacted by the cities of Paramount and Redondo Beach.

We realize the importance of this issue and are willing to offer whatever assistance we can in improving enforcement in this area.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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